



State of Arizona
Citizens Clean Elections Commission

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M E M O R A N D U M

To: Commissioners
From: Todd F. Lang, Executive Director
Date: September 6, 2006
Subject: Possible Independent Expenditure

REVISED

On August 30, 2006, the Commission issued matching funds to Ted Downing ("Downing"), a participating candidate for Senate in Legislative District 28, for phone calls, initially categorized as a "push poll," that voters in the district had been receiving.

Due to new information that has come forward in this matter, the Executive Director recommends the Commission reconsider the initial amount of matching funds disbursed to Downing.

I. Factual Background

A sworn statement from Michelle Davidson was submitted to the Commission staff on September 6, 2006. (Exhibit A.) Ms. Davidson is a Senior Consultant at Media Guys, Inc., a political consulting firm. Media Guys, Inc. was paid by the Political Action Committee, "Protect Tucson Women" ("PAC"). Davidson asserts that the piece earlier determined as a "Push Poll" was indeed a "Real Poll." The information gathered from the poll was used for purposes of determining an effective message for a subsequent mailer done by the PAC.

Ms. Davidson contends that the poll "did not constitute an expenditure against a participating candidate," and therefore does not trigger matching funds. After a review of the script of the phone calls however and as previously determined by the Commission, it is apparent that the phone calls did constitute expressed advocacy. Ms. Davidson states that the price of the poll was \$1,500.00. The mailer was reported by the PAC on August 30, 2006. The cost of the mailer was \$3,058.56. (Exhibit B.) It is interesting to note that mailer does not actually include the subject matter of the poll. (Exhibit C.)

II. Reconsideration of Matching Funds

Before this information became known, matching funds were issued to Downing for \$7,974.00. The amount was initially based on an estimation of high efficacy voters in the district. The Commission has the authority to reconsider the amount disbursed based on A.A.C. R2-20-704(A)(1)¹. The cost of the mailer and the poll combined is \$4,558.56.

¹ A.A.C. R2-20-704(A)(1) states, "In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission." The rule further states, "In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities" (Emphasis Added.)

Cost of Mailer	\$3,058.56
Cost of Poll	\$1,500.00
Initial Matching Funds Disbursed	\$7,974.00
Difference	\$3,415.44

III. Recommendation

It is unfortunate, that this information became known following the disbursement of funds. It is also unfortunate that any expenditure regarding this matter was not reported until the day the original decision was made.

My recommendation is that the Commission reconsider the amount of matching funds originally disbursed to Downing in this matter. The recommended revised amount of matching funds is \$4,558.56. It is recommended that pursuant to A.A.C. R2-20-704(B)(1)², the Commission request Downing cease spending and issue a repayment to the fund for the monies not yet expended, in excess of the revised amount by September 19, 2006.

Dated this 6th day of September, 2006

By: _____
Todd F. Lang, Executive Director

² A.A.C. R2-20-704(B)(1) states, "If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion."